09-318

In the
Supreme Court of the United States

Terrance Morris, Rosalind Morris
& Ricardo Morris,
Petitioners,

v.

Jarrett Lanpher & Robert Schweitzer
Respondents.

On Petition for Writ of Certiorari to
the United States Court of Appeals
for the Eighth Circuit

Petition for Rehearing

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Questions Presented

In their Complaint, the Petitioners, the Family, clearly pled a false and incomplete search warrant application claim, and, a derivative failure to supervise claim against the Respondents.

While the Respondents' motion for summary judgment was pending, the Petitioners and the Respondents jointly proposed jury instructions which identify the *essential elements* of the pled claims.

A close look at the Respondents' motion for summary judgment, and, the agreed jury instructions, reveals that Respondents' motion evidence and argument never squarely meets any of the *essential elements* of the pled *Franks v. Delaware* claim. Instead, the Respondents' motion attempted to defeat a never pled *Malley v. Briggs* facially invalid search warrant application claim. Therefore, the questions presented in this Petition for Rehearing are:

1. Can defendants moving for summary judgment possibly meet their *burden of persuasion* for entitlement to *judgment as a matter of law* if they try to defeat an unpled claim and their evidence and argument *never* squarely meets nor defeats any *essential element* of the pled claim at issue?

2. Does a lawyer's duty of candor not apply to *Celotex* "absence of evidence" assertions made by defendants moving for summary judgment in today's federal courts?

TABLE OF CONTENTS

Page

Questions Presented i

Table of Contents ii

Table of Authorities v

Current Order in this Court 1

Statement of Grounds for Rehearing 1

I.

The Family clearly pled a *Franks v. Delaware* false and incomplete search warrant application claim against Lanpher..... 1

II.

The Family clearly pled a failure to supervise claim against Schweitzer for directly participating in Lanpher's *Franks v. Delaware* violation..... 2

III.

The Family and the Respondents jointly proposed jury instructions identify the *essential elements* of the clearly pled *Franks v. Delaware* claim..... 3

TABLE OF CONTENTS-Continued

Page

IV.

The *essential elements* of the *Franks v. Delaware* claim identified in the jointly proposed jury instructions mandate evidence and argument specifically related to the *truthfulness* and *completeness* of the sworn affidavit/application for search warrant filed by Lanpher. 5

V.

In their motion for summary judgment, Respondents' motion evidence and argument never squarely meets any *essential element* of the pled *Franks v. Delaware* claim because they put on no evidence or argument regarding the *truthfulness* and *completeness* of the sworn affidavit..... 7

VI.

In their motion for summary judgment, Respondents attempted to defeat a never pled *Malley v. Briggs* facially invalid search warrant claim..... 10

TABLE OF CONTENTS-Continued

Page

VII.

In their motion for summary judgment, Respondents did not make a *Celotex* "absence of evidence" assertion. Respondents waited until their Reply Suggestions to make a *Celotex* "absence of evidence" assertion that was not supported by proof of insufficient discovery responses, and, that seems to violate the lawyer's professional duty of candor to the court 11

Conclusion 14

Sup. Ct. R. 44 Certification of Counsel 15

Rehearing Appendix-Table of Contents

BB. Note on Appendix Pagination..... 214a

CC. Digest of the Family's Complaint (April 21, 2005)..... 215a

DD. Digest of Jointly Proposed Jury Instructions (February 1, 2007)..... 241a

TABLE OF AUTHORITIES

Page

Cases

Celotex Corp. v. Catrett,
477 U.S. 317 (1986)..... 12, 13, 14

Cross v. City of Des Moines,
965 F.2d 629 (8th Cir.1992)..... 11

Franks v. Delaware,
438 U.S. 154 (1978)..... *passim*

George v. City of St. Louis,
26 F.3d 55 (8th Cir. 1994)..... 11

Hunter v. Namanny,
219 F.3d 825 (8th Cir. 2000)..... 4

Malley v. Briggs,
475 U.S. 335 (1986)..... 10, 11

Nissan Fire & Marine Ins. Co. v. Fritz Cos.,
210 F.3d 1099 (9th Cir. 2000)..... 8, 11

Constitutional Provisions

U.S. CONST. amend. IV..... *passim*

Statutes

42 U.S.C. §1983..... *passim*

TABLE OF AUTHORITIES-Continued

Page

Rules

FED. R. CIV. P. 11 13

FED. R. CIV. P. 56 ..... *passim*

Books and Journals

SCHWARZER, HIRSCH & BARRANS, THE ANALYSIS AND DECISION OF SUMMARY JUDGMENT MOTIONS (Federal Judicial Center 1991) 13

10A C. WRIGHT, A. MILLER AND M. KANE, FEDERAL PRACTICE AND PROCEDURE § 2727 (3rd ed. 1998) 8

Current Order in this Court

This Court denied the Petition for Certiorari by Order dated October 20, 2009.

Statement of Grounds for Rehearing
(Sup. Ct. R. 44)

Petitioners, the Family, state the substantial grounds not previously presented in the Petition for Writ of Certiorari. The numbered parts of this Petition organize the presentation, but do not state separate individual grounds. Petitioners respectfully request the Court to consider all of the parts together as the Petitioners' grounds warranting the grant of Rehearing on the Petition for Writ of Certiorari.

I.

The Family clearly pled a *Franks v. Delaware* false and incomplete search warrant application claim against Lanpher.

The Family's Complaint is reprinted in this Petition's Appendix. App. 215a-240a. The Complaint includes a Statement of Facts. App. 215a-232a, ¶¶19-79.

Count I follows the Statement of Facts. App. 232a-235a, ¶¶80-95. The first paragraph of Count I incorporates all paragraphs from the Statement of Facts. App. 232a, ¶80.

Count I states the claim against Lanpher for Illegal Affidavit/Application for Search Warrant. The stated and incorporated paragraphs clearly allege the specific constitutional violation of dishonesty and the failure to disclose exculpatory facts in a search warrant affidavit/application.

In paragraphs 47-48, the Family alleges knowing, deliberate and reckless omissions of exculpatory material facts and false light. App. 223a, ¶¶47-48.

In paragraphs 49-53, the Family alleges knowing, deliberate and reckless false chronology; misrepresentation; incompleteness; and intent to mislead the prosecutor and the warrant judge. App. 224a-225a, ¶¶49-53.

In paragraph 84, the Family alleges that KCPD Legal Bulletin No. 98-2 tells KCPD Officers the legal requirements for honesty and disclosure of exculpatory facts in warrant affidavits. App. 232a-233a, ¶84.

In paragraphs 87-94, the Family alleges the damages directly and proximately resulting from Lanpher's Illegal Affidavit/Application for a Search Warrant. App. 233a-234a, ¶¶87-94.

In the relevant paragraphs that stated the claim against Lanpher, the Family clearly alleged knowing, deliberate and reckless dishonesty; the failure to disclose exculpatory facts; and, an intent to mislead the prosecutor and the warrant judge.

II.

The Family clearly pled a failure to supervise claim against Schweitzer for directly participating in Lanpher's *Franks v. Delaware* violation.

Count II follows Count I. App. 235a-239a, ¶¶96-117. The first paragraph of Count II incorporates all paragraphs from the Statement of Facts and from Count I. App. 235a, ¶96.

Count II states the claim against Schweitzer for

Failure to Supervise Lanpher. It is clear that the stated and incorporated paragraphs allege Lanpher's underlying constitutional violations to be, specifically, dishonesty, and, the failure to disclose exculpatory facts in a search warrant affidavit/application.

In paragraphs 100-101, the Family alleges that Schweitzer knew that KCPD officers would swear out Affidavit/Applications for Search Warrants that included deliberately false and misleading information and, that failed to disclose exculpatory facts then known to the affiant. App. 236a, ¶¶100-101.

In paragraphs 104-116, the Family alleges the damages directly and proximately resulting from Schweitzer's failure to supervise Lanpher and Schweitzer's direct participation in Lanpher's underlying constitutional violation. App. 237a-239a, ¶¶104-116.

In the relevant paragraphs that stated the claim against Schweitzer, the Family clearly alleged Schweitzer's failure to supervise Lanpher; and, Schweitzer's direct participation in: Lanpher's knowing, deliberate and reckless dishonesty; failure to disclose exculpatory facts; and, intent to mislead the prosecutor and the warrant judge.

III.

The Family's and the Respondents' jointly proposed jury instructions identify the *essential elements* of the clearly pled *Franks v. Delaware* claim.

While the Respondents' motion for summary judgment was pending, the Petitioners and the Respon-

dents jointly proposed jury instructions which identify the essential elements of the pled claims. App. 241a-245a.

For Count I, the Family and Lanpher agreed that the essential elements were:

> ***First***, defendant Lanpher swore an affidavit/application for search warrant in which he made false statements or omitted truthful information that created a falsehood; and
>
> ***Second***, defendant Lanpher made those omissions or false statements either deliberately or with a reckless disregard for the truth; and
>
> ***Third***, those omissions or false statements were material, or necessary, to determining whether or not probable cause for the search warrant existed, and
>
> ***Fourth***, plaintiffs suffered damages as a direct result of defendant Lanpher's actions. App.243a.

The Family and Lanpher also agreed to a paragraph explaining Fourth Amendment search warrant requirements, the definition of probable cause, and the definitions for *Franks v. Delaware* reckless disregard for the truth for included and/or omitted information. App. 243a-244a.

The Family and Lanpher also agreed to the authority supporting the jointly proposed instruction, and listed those authorities. App. 244a.

Notably, one case listed, *Hunter v. Namanny*, 219 F.3d 825 (8th Cir. 2000), is a leading Eighth Circuit precedent for 42 U.S.C. §1983 *Franks v. Delaware*

claims. The other listed authorities are well-known for the relevant principles they establish. App. 244a.

IV.

The *essential elements* of the *Franks v. Delaware* claim identified in the jointly proposed jury instructions mandate evidence and argument specifically related to the *truthfulness* and *completeness* of the sworn affidavit/application for search warrant filed by Lanpher.

The *essential elements* of the jointly proposed jury instructions are the *ultimate fact questions* at issue in the case.

Element One presents pure questions of *historical fact*.

> ***First***, defendant Lanpher swore an affidavit/application for search warrant in which he made false statements or omitted truthful information that created a falsehood;

Everyone agrees that Lanpher swore an affidavit/application for search warrant.

What remains at issue is (1) whether any of the statements in the affidavit are false; and/or (2) whether Lanpher failed to present truthful and complete description of the totality of the facts known to him.

The only way to squarely deal with the *historical fact* issues of this Element One is to put on evidence and argument specifically related to the *truthfulness* and the *completeness* of the sworn affidavit.

Element Two and Element Three can not be decided

until Element One's pure questions of *historical fact* are answered affirmatively; that, yes there were false statements, and/or omissions of truthful information. Once you have those answers; then Element Two presents a question of *historical fact*, and, a *mixed law-fact* question; and, Element Three presents a *mixed law-fact* question.

> ***Second***, defendant Lanpher made those omissions or false statements either deliberately or with a reckless disregard for the truth; and
>
> ***Third***, those omissions or false statements were material, or necessary, to determining whether or not probable cause for the search warrant existed.

Element Two's question of *historical fact* is whether any false statements or omissions of truthful information were made deliberately.

Element Two's *mixed-law fact* question is whether any false statements or omissions of truthful information were made with a reckless disregard of the truth. That is a *mixed law-fact* question because *Franks* "reckless disregard for the truth" is a legal standard defined differently in the lower federal courts.

Element Three's *mixed-law fact* question is whether any false statements or omissions of truthful information were material, or necessary, to determining whether or not probable cause for the search warrant existed. That is a *mixed law-fact* question because the relative materiality of information relevant to a probable cause determination; and, the probable cause determination itself, depend on legal standards.

For this Petition for Rehearing, the key point is that Element Two's *historical fact* question and *mixed-law fact* question are unanswerable until you have an answer to Element One's pure questions of *historical fact* regarding the *truthfulness* and *completeness* of the sworn affidavit.

The exact same thing can be said about Element Three's *mixed law-fact* question. It too is not answerable without an answer to Element One's pure questions of *historical fact* regarding the *truthfulness* and *completeness* of the sworn affidavit.

Because Element Two and Element Three cannot be decided unless Element One's pure questions of *historical fact* regarding the *truthfulness* and *completeness* of the sworn affidavit are decided first, the Respondents could not prevail on their summary judgment motion unless they put on overwhelming evidence in their favor on the *truthfulness* and *completeness* of the sworn affidavit.

V.

In their motion for summary judgment, Respondents' motion evidence and argument never squarely meets any *essential element* of the pled *Franks v. Delaware* claim because they put on no evidence or argument regarding the *truthfulness* and *completeness* of the sworn affidavit.

The Respondents' burdens as defendants moving for summary judgment are described excellently in the following passage:

> A moving party without the ultimate burden of persuasion at trial -usually, but not always, a de-

> fendant -has both the initial burden of production and the ultimate burden of persuasion on a motion for summary judgment. *See* 10A C. WRIGHT, A. MILLER AND M. KANE, FEDERAL PRACTICE AND PROCEDURE § 2727 (3rd ed. 1998). In order to carry its burden of production, the moving party must produce either evidence negating an essential element of the nonmoving party's claim or defense or show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial. In order to carry its ultimate burden of persuasion on the motion, the moving party must persuade the court that there is no genuine issue of material fact. *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000) [some internal citations omitted]

The only evidence that the Respondents offer in their motion for summary judgment are the same "facts" that Lanpher stated in his original warrant application. App. 48a-49a, ¶¶4-12. The Respondents then argued that those "facts" demonstrate probable cause and that, therefore, Respondents get summary judgment.

That is not an appropriate route to summary judgment because the *essential elements* of the pled *Franks v. Delaware* claim deal with whether Lanpher's affidavit/ application for search warrant was a *truthful* and *complete* retelling of the *totality* of the circumstances known to Lanpher when he swore to its contents.

Please remember that Respondents never solved the

crime, and, never even came close. An innocent Family's house was kicked-in after a purported photo lineup identification. Something went wrong somewhere and a *Franks v. Delaware* defendant has to offer some explanation as to what went wrong; and, whether the warrant judge was given the full picture of the facts; and, whether the warrant judge, given that full picture, would have protected the Family by denying the warrant application.

The only way for Respondents to squarely meet the *essential elements* of the pled *Franks v. Delaware* claim is to offer evidence detailing the *totality* of the circumstances *known* to Lanpher when he swore out the warrant. Lanpher must offer some evidence as to the *truthfulness* and *completeness* of the warrant application he submitted compared to the *totality* of facts that he learned during the investigation up until he swore out the warrant application before the warrant judge.

Respondents can not meet their summary judgment *burden of persuasion* that their evidence "negates an *essential element* of the Family's claim" and that they are entitled to *judgment as a matter of law* if they never even try to put on evidence material to *any essential element* of the Family's pled claim.

Reader, please take a close look at the evidence and argument offered by Respondents in their motion for summary judgment at App. 47a-55a, and see that Respondents fail to meet their summary judgment *burdens of persuasion* on negating any *essential element* of the Family's claim and on proving entitlement to *judgment as a matter of law*, because the Respondents offer nothing on the *truthfulness* and *completeness* of

the sworn affidavit.

VI.

In their motion for summary judgment, Respondents attempted to defeat a never pled *Malley v. Briggs* facially invalid search warrant claim.

A *Malley v. Briggs* claim alleges that a "reasonably well-trained officer ... would have known that his affidavit failed to establish probable cause and that he should not have applied for the warrant." *Malley v. Briggs*, 475 U.S. 335, 345 (1986).

In such a case, the 42 U.S.C. §1983 plaintiff is claiming that the police officer submitted a warrant application that did not really demonstrate, on its face, probable cause.

In other words, the *Malley v. Briggs* plaintiff says that even though the warrant judge issued the warrant, the warrant applicant should be liable for a constitutional violation because the theoretical reasonable police officer would have known that the warrant application was facially invalid and that any warrant judge that approved it was making a mistake.

The Family never claimed that the warrant affidavit/application submitted by Lanpher was facially invalid. The Family never stated a *Malley v. Briggs* claim. To understand the Family's pled claim in plain language please read Pet.Cert., pp. 10-13.

The *Malley v. Briggs* defendant argues that the warrant demonstrated, on its face, a sufficient factual showing of probable cause. That is the exact argument that Respondents made in their summary judgment motion. App. 50a-53a.

As far as evidence, the Respondents repeated the same "facts" that Lanpher stated in his original warrant application. App. 48a-49a, ¶¶4-12. The Respondents then argued that those "facts" demonstrate probable cause and that Respondents get summary judgment.

As far as the Respondent's arguments in their summary judgment motion, they only cited a *Malley v. Briggs* case, *George v. City of St. Louis*, 26 F.3d 55 (8th Cir. 1994), *see* App.51a.; and a case even more inapposite to the pled claim, a warrantless entry case, *Cross v. City of Des Moines*, 965 F.2d 629 (8th Cir.1992). App. 52a. The Respondents cited not one *Franks v. Delaware* case, and the Respondents did not offer any evidence or argument on whether Lanpher gave an *honest* and *complete* picture of the *totality* of the circumstances *known* to him when he swore out the warrant.

VII.

In their motion for summary judgment, Respondents did not make a *Celotex* "absence of evidence" assertion. Respondents waited until their Reply Suggestions to make a *Celotex* "absence of evidence" assertion that was not supported by proof of insufficient discovery responses, and, that seems to violate the lawyer's professional duty of candor to the court.

As stated in the quoted passage from *Nissan Fire* on p. 9 above, Defendants moving for summary judgment can meet their summary judgment *burden of persuasion on the motion* by showing that the nonmoving Plaintiffs lack evidence of an *essential element* to carry

their ultimate burden of persuasion at trial. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)

Justice White was the fifth vote in the *Celotex* majority and his controlling[1] concurrence explained his view of how a moving party could make a *Celotex* "absence of evidence" assertion.

> "I also agree that the movant may rely on depositions, answers to interrogatories, and the like, to demonstrate that the plaintiff has no evidence to prove his case and hence that there can be no factual dispute. But the movant must discharge the burden the Rules place upon him: It is not enough to move for summary judgment without supporting the motion in any way or with a conclusory assertion that the plaintiff has no evidence to prove his case." *Celotex*, 477 U.S. 317, 328 (1986) (White, J., concurring)

The *Celotex* "absence of evidence" assertion is explained further in this passage:

> "...If the motion asserts that the opponent lacks proof to establish a requisite element of its case, as in *Celotex*, the movant must show the absence of facts, usually by producing relevant excerpts from the opponent's discovery responses, supplemented as needed by affidavits.
>
> ...[T]he movant owes a duty of candor to the court; it may not present only the portions of the record supporting its position while knowingly omitting evidence to the contrary that may raise

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1. See *Celotex*, 477 U.S. 317, 329 (1986) (Brennan, J., dissenting)

> a genuine issue of material fact. Such conduct arguably warrants the imposition of sanctions under Fed. R. Civ. P. 11 or Rule 56(g)." SCHWARZER, HIRSCH & BARRANS, THE ANALYSIS AND DECISION OF SUMMARY JUDGMENT MOTIONS 46-47 (Federal Judicial Center 1991)

The *Celotex* "absence of evidence" assertion is an available method for a defendant to meet its summary judgment burdens of persuasion. However, in this case, the Respondents did not make a *Celotex* "absence of evidence" assertion and showing in their motion for summary judgment.

The Family, in their Suggestions in Opposition to the motion for summary judgment, put on enough admissible evidence on each *essential element* of the pled *Franks v. Delaware* claim for a reasonable jury to return a verdict in its favor.

Please review the Statements of Material Facts and the cited evidence in the Digest of the Family's Suggestions in Opposition. App. 56a-75a.

Please consider the *essential elements* of the pled *Franks v. Delaware* claim when reviewing the evidence.

Please also review the Family's *Franks* Corrected Affidavit and confirm that it is supported by the evidence and that no warrant judge would sign it. App. 166a-200a.

The Family offered evidence on the *truthfulness* and *completeness* of the warrant affidavit. Every piece of evidence relied on by the Family in the drafting their *Franks* Corrected Affidavit is properly in the summary

judgment record.

The Local Rule 56.1, Summary Judgment Motions, affords automatic Reply Suggestions to the movant, but denies automatic Sur-reply for the party defending the motion. App. 38a-39a.

Is that fair to allow *Celotex* "absence of evidence" assertions to debut in Reply Suggestions?

What if the *Celotex* assertion violates Justice White's and Judge Schwarzer's understandings that the movant support the assertion with proof that the other party gave insufficient answers to discovery requests or deposition questions; and, that the lawyer's duty of candor requires a *candid* assessment of the evidence in the record?

Should we not be wary of scribes who go around in robes in the marketplaces and accept seats of honor when they easily believe naked *Celotex* assertions by federal civil defendants?

The widow with the kicked-in house pays three courts' filing fees and she gets not one genuine Rule 56 review?

Conclusion

The Family Respectfully Requests this Court Grant this Petition for Rehearing of their Order denying the Petition for Writ of Certiorari.

The Family further Requests this Court Grant the Petition for Writ of Certiorari, even if such Grant summarily Vacates and Remands for Trial, or, for an Honest-to-God summary judgment analysis.

Respectfully Submitted,

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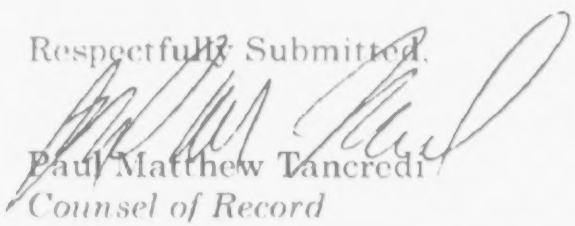
Counsel to Petitioners

Sup. Ct. R. 44 Certification of Counsel

I, Paul Matthew Tancredi, certify that this Petition for Rehearing is restricted to the grounds specified in Sup. Ct. R. 44, ¶2. Specifically, this Petition states other substantial grounds not previously presented in the Petition for Writ of Certiorari.

I also certify that I present this Petition for Rehearing in good faith and not for delay. My clients paid enough filing fees to warrant an honest Rule 56 review of this record by a capable federal judge.

Respectfully Submitted,



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Note on Appendix Pagination

The pages of the Appendix in this Petition for Rehearing are numbered in continuation with the Appendix in the Petition for Writ of Certiorari filed in the case.

The first page of the Appendix in the Petition for Writ of Certiorari is page "App. 1a," and the last page is "App. 213a."

This is the first page of this Appendix in this Petition for Rehearing and it is numbered "App. 214a."

Each succeeding page in this Appendix in this Petition for Rehearing is numbered consecutively, and the last page is "App. 245a."

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

Terrance Morris, et al., Plaintiffs,	)	
vs.	)	No. 05-0362-CV-W-FJG
Jarrett Lanpher, et al., Defendants.	)	

Digest of the Family's Complaint

[Introduction, Preliminary Statement, Jurisdiction and Venue omitted]

Statement of Facts

19. Plaintiff, Rosalind Morris, (hereinafter, "Ms. Morris") resides in her home at 1318 East 62nd Street, Kansas City, Missouri 64110, (hereinafter, "Morris Home") and has so resided there at all times since she acquired said real property by the Warranty Deed filed August 5, 1994, with the Recorder of Deeds of Jackson County, Missouri, as Document Number 1994K-1153442.

20. Ms. Morris is the mother of Plaintiffs Terrance Morris, (hereinafter, "Terrance", born March 11, 1981, and now 24 years old), and Ricardo Morris, (hereinafter, "Ricardo", born June 24, 1979, and now 25 years old), and all of them enjoy a reputation in the community as responsible, law abiding, and gainfully employed citizens.

21. Ms. Morris, Terrance, and Ricardo, each and all, have never had any involvement with criminal activity and more particularly, any crimes involving violence, firearms, illegal commerce, or controlled substances, and none of them have any record of convictions for anything more serious than traffic ordinance violations or late payment of the fines assessed for the same.

22. On July 28, 2003, at approximately 11:00 PM, two assailants fired gunshots at the owner-resident (hereinafter, "Gunshot Victim") of 6206 Paseo, Kansas City, Missouri, an address several houses away from the Morris Home.

23. Minutes after the shooting, KCPD officers and paramedics responded to a 9-1-1 call placed by Gunshot Victim. Gunshot Victim suffered two serious gunshot wounds from which he has survived.

24. Before paramedics transported Gunshot Victim to the hospital, he reportedly told KCPD officers that two unknown black male suspects kicked in the back door and then shot him twice with a "9 millimeter" handgun.

25. The KCPD officers processing the crime scene subsequently sought to secure a search warrant for Gunshot Victim's home, and, within four hours after the shooting, obtained a warrant approved by a Jackson County Judge at 2:39 AM. on July, 29, 2003.

26. In processing the crime scene and executing the search warrant for Gunshot Victim's home, KCPD officers discovered that Gunshot Victim main-

tained an arsenal of weapons and ammunition including: two Bushmaster semi-automatic assault rifles; more than 700 rounds of ammunition for said assault rifles; a Mossberg 12-gauge shotgun which was stored under Gunshot Victim's bed with the safety set on "fire' and a live shell in the chamber; live shotgun shells; and ammunition and hardware suitable for weapons not then found, including 22-caliber long rifle ammunition and a magazine for a Colt 5.56 mm handgun..

27. In processing the crime scene and executing the search warrant for Gunshot Victim's home, police discovered evidence indicating that Gunshot Victim was likely involved in the illegal trafficking, distribution, sale, and use of mind-altering and illegal controlled substances including: an Ohaus CS-2000 digital gram scale with a white residue; a Rite Weight digital pocket balance with a white residue later analyzed to be Cocaine, a schedule II controlled substance; two plastic bags containing a leafy green substance later identified to be Marijuana, a schedule I controlled substance; and residual amounts of the same green leafy substance on a kitchen counter and the bedroom dresser, both of which indicated recent use and consumption of Marijuana by Gunshot Victim or visitors to his home.

28. In processing the crime scene and executing the search warrant, police also discovered indications that Gunshot Victim was remodeling the bungalow-sized home in a strange, garish, and ostentatious style not in keeping with its original layout; or, similarly sized homes in its immediate vicinity, including: installing an aquarium into the wall be-

tween the dining room and bedroom and viewable from both; installing a large screen TV into the living room wall; and, converting a bedroom into a hot tub room.

29. In processing the crime scene and executing the search warrant, police also found in Gunshot Victim's half of the shared easement garage, a boxed Jacuzzi tub, an air conditioning unit with severed wires and pipes indicating that it was probably stolen from its previous installation, and a four wheeler all-terrain vehicle.

30. Soon after the shooting, KCPD officers interviewed Gunshot Victim's next-door neighbor to the south and the neighbor reportedly stated: that he heard a shot; and, in looking out the window he could see and hear Gunshot Victim trying to summon help by making noise and calling out; that he responded to Gunshot Victim's cries for help by going downstairs and looking out his backdoor; and, that upon seeing indications of an intruder in Gunshot Victim's garage with a flashlight, he yelled "Police Officer," and caused that intruder to flee on foot.

31. The neighbor in paragraph 30 above reportedly further stated to KCPD officers that the house had been a drug house before Gunshot Victim moved in and that a white male (hereinafter, "J.L.") resided with Gunshot Victim, an African-American male. Reportedly, the neighbor further stated that he has never seen Gunshot Victim or J.L. go to work and that he sometimes saw them "loading up two 4-wheelers on a ramp."

32. On or about noon of July 29, 2003, the next day after the shooting, KCPD officers responded to a call from a neighboring resident who lived on the east side of The Paseo and across the median dividing The Paseo's northbound and southbound traffic lanes, who reportedly stated that he had seen J.L., identified as "the suspect of the assault," riding a yellow and white four wheel all-terrain vehicle, (hereinafter, "yellow ATV") in the driveway of Gunshot Victim's home and, that J.L. later sped away from the scene wearing a yellow and white helmet.

33. Approximately two hours later, a KCPD officer was waved down by a concerned motorist who then reportedly said that: earlier that day, he had been waiting for the traffic light at the intersection of Volker Boulevard and Troost Avenue when a white male, later confirmed to be J.L., arose out of Brush Creek riding a yellow ATV; and that, soon after J.L. appeared, a black and silver pistol fell from his pants and onto the street; and that, J.L. retrieved the firearm and sped from the scene.

34. As a result of the reports in paragraphs 32 and 33 above, an "all call for a party armed" went out to KCPD officers on patrol to alert them of the need to apprehend J.L..

35. Later that afternoon, J.L. led KCPD officers on a high speed pursuit through neighborhoods and highways in Kansas City, Missouri, while aboard the yellow ATV; such pursuit ended with the apprehension and arrest of J.L. by KCPD officers. While in the course of fleeing from KCPD officers on the yellow ATV, J.L. discarded a Smith & Wesson Model

SW9V semi-automatic handgun in the driveway of a residence in the 5800 block of Blue Hills Road in Kansas City, Missouri.

36. Many among the broadcast media in Kansas City found the facts of a high speed chase of a fleeing suspect on an ATV novel, notable, and notorious and, therefore, reported the event in their news programs soon thereafter. As a result, many in the general community knew of the high speed pursuit and arrest of a suspect aboard an ATV.

37. On or about 7:19 PM of July 29, 2003, and within a few hours of the arrest of J.L., KCPD Detective Jarrett Lanpher, ((hereinafter, "Defendant Lanpher"), interviewed Gunshot Victim at Research Medical Center, Kansas City, Missouri. This interview occurred less than 24 hours after Gunshot Victim: sustained the gunshot wounds, underwent emergency surgery and received anesthesia for the same; had very likely received significant amounts of medication for the alleviation of pain; and was also likely suffering from the mind-altering effects of recent and long term abuse of illegal drugs.

38. According to the written interview summary of Defendant Lanpher, Gunshot Victim reportedly recalled the attack by first describing "two black males" as the assailants. Gunshot Victim reportedly also described his efforts to summon help by making noise and calling out after he had retreated to the basement of the house, and that, at one point, one attacker came to a broken basement window and threatened to try harder to kill Gunshot Victim, but only if he continued to make loud noise.

39. According to the written interview summary of Defendant Lanpher, Gunshot Victim reportedly said that J.L. lived with him and that J.L. "hung with some dudes around the corner on east 62nd in a red brick house."

40. According to the written interview summary of Defendant Lanpher, Gunshot Victim reportedly said that he did not know anything about assault rifles being in his home.

41. According to the written interview summary of Defendant Lanpher, at the conclusion of the interview, Defendant Lanpher reportedly asked Gunshot Victim to speculate about whether he knew any possible suspects, and that Gunshot Victim reportedly stated "Dink" and "Mont", two persons who Gunshot Victim reportedly believed to be acquaintances of J.L., even though Gunshot Victim did not identify anyone during the 9-1-1 call that he placed, or at the crime scene when emergency responders arrived, Defendant Lanpher now reported that Gunshot Victim claimed that he could identify his attackers.

42. "Dink" and "Mont" are the lifelong nicknames of Ricardo and Terrance, respectively; and Defendant Lanpher only learned their names from his interview of J.L. that he conducted consequent to J.L.'s arrest and not long before the interview with Gunshot Victim. Defendant Lanpher's claim in his interview summary that Gunshot Victim spontaneously spoke their names or nicknames is false. In fact, Defendant Lanpher introduced their names into the conversation. Further, the Morris Home is not the red brick house described by Gunshot Victim in

paragraph 39 above. The Morris Home is neither red nor brick.

43. On or about 10:20 AM of July 30, 2003, and approximately 36 hours after the shooting, Defendant Lanpher returned to Gunshot Victim's hospital room and while Gunshot Victim faced the same memory diminishing factors outlined in paragraph 37 above.

44. According to the written interview summary of Defendant Lanpher, Gunshot Victim reportedly recognized Ricardo in a photo lineup of six subjects, reportedly weakly scrawled his initials on the back of the photo as an acknowledgement, and reportedly claimed that Ricardo was one of his attackers. In preparing the photo lineup, Defendant Lanpher purportedly conducted a law enforcement computer check of Terrance and Ricardo. That computer check would have made it plainly obvious to Defendant Lanpher that neither Terrance nor Ricardo have any history or criminal record of prior and similar bad acts.

45. According to the written interview summary of Defendant Lanpher, Gunshot Victim reportedly said that he had no idea why anyone would want to attack him, and that all he does for a living is buy, fix-up, and then sell, houses.

46. On or about 1:29 PM of July 30, 2003, Defendant Lanpher, presented, subscribed and swore an Affidavit/Application for a Search Warrant before a Jackson County Judge, who then issued a search warrant to enter the Morris Home and to search for

"Clothing, handguns, rifles, ammunition, spent shell casings, trace evidence, flashlights."

47. In presenting the Affidavit in paragraph 46 above, Defendant Lanpher knowingly, deliberately, and with reckless disregard for the truth, omitted facts that were material to a finding of probable cause for the single reason that such omitted facts were exculpatory, and therefore, would, if not omitted, negate a finding of probable cause before a conscientious, objective, and reasoning magistrate or prosecutor.

48. In presenting the Affidavit in paragraph 46 above, Defendant Lanpher knowingly, deliberately, and with reckless disregard for the truth, intentionally cast a false light on exculpatory and material facts for the sole purpose of making such facts appear inculpatory, and for the single reason that such facts, if seen in a true light, would negate a finding of probable cause before a conscientious, objective, and reasoning magistrate or prosecutor. One clear example of this technique is that Defendant Lanpher included the Affidavit that "a computer check was conducted." Any computer check of Terrance and Ricardo would show no criminal history, but Defendant Lanpher did not disclose that probative exculpatory information. Instead, he cast the fact of the computer check in the false light of the implication that judges and prosecutors would inevitably draw if an affiant officer made mention of a computer check of a suspect in a warrant application, that, the officer had verified the suspect's criminal history for prior and similar bad acts.

49. In presenting the Affidavit in paragraph 46 above, Defendant Lanpher knowingly, deliberately, and with reckless disregard for the truth intentionally cast his narrative recitation of the facts into a false chronology for the sole purpose of creating a false impression that probable cause may have existed in consideration of the totality of the circumstances, and for the single reason that, such facts, if understood in their true chronology, would, in consideration of the totality of the circumstances, be material and negate a finding of probable cause before a conscientious, objective, and reasoning magistrate or prosecutor.

50. In presenting the Affidavit in paragraph 46 above, Defendant Lanpher knowingly, deliberately, and with reckless disregard for the truth intentionally practiced the artifices and deceptions described in paragraphs 47, 48, and 49 above for the sole purpose of combining their effects and creating a false impression that probable cause may have existed in consideration of the totality of the circumstances, and for the single reason that, if he had not practiced the artifices and deceptions described in paragraphs 47, 48, and 49 above, the absence of their combined effect would, in consideration of the totality of the circumstances, negate a finding of probable cause before a conscientious, objective, and reasoning magistrate or prosecutor.

51. Defendant Lanpher, knowingly, deliberately and with reckless disregard for the truth practiced the acts described in paragraphs 47, 48, 49, and 50 with the intent of deceiving both the Assistant Jackson County Prosecutor and the Jackson County

Judge who approved the warrant application into a finding of probable cause when no objective and reasonable officer would have believed that it existed.

52. The intentional deceptions of Defendant Lanpher described in paragraphs 47, 48, 49, 50, and 51 are known to the plaintiffs; and, upon information and belief, all or some of the unverified facts asserted by Defendant Lanpher in presenting the Affidavit described in paragraph 46 above are false; and, evince the same intent to deceive both the Assistant Jackson County Prosecutor and the Jackson County Judge who approved the warrant application into a finding of probable cause when no objective and reasonable officer would have believed that it existed.

53. Included in the unverified facts described in paragraph 52 above, are any facts stated in Defendant Lanpher's interview summaries referenced in paragraphs 38, 39, 40, 41, 44, and 45 above.

54. Soon after the warrant issued, the KCPD assembled a Tactical Entry Team, (hereinafter, "KCPD 630-Squad") to execute it at the Morris Home. Sergeant Mark Hockemeier, (hereinafter, Defendant Hockemeier") was present as the senior member of the KCPD 630-SQUAD. Officer Anthony Hernandez, (hereinafter, "Defendant Hernandez") and Officer Ryan Bronner, (hereinafter, "Defendant Bronner") were present as members of the KCPD 630-SQUAD. Defendant Lanpher and his supervisor, Sergeant Robert Schweitzer, (hereinafter, "Defendant Schweitzer") were also present, as well as other KCPD patrol officers supporting the operation.

55. Terrance was the only person present inside the Morris Home when the KCPD 630-SQUAD prepared to execute the search warrant. Terrance was in the basement, a normally occupied area of the Morris Home.

56. On or about 2:33 PM of July 30, 2003, KCPD 630-SQUAD knocked on the door of the Morris Home. Terrance heard the knock and immediately proceeded up the stairs to answer the door. Terrance first believed that it was his mother Ms. Morris arriving home from work and that she may have groceries that he should carry into the house, because otherwise, she would use the key to enter without knocking.

57. A mere ten seconds from the time of knocking, Defendant Bronner used a battering ram to bust down the door of the Morris Home, and the entire KCPD 630-SQUAD crashed inside wearing full armor and with weapons drawn.

58. Terrance had proceeded as far as the top of the stairs of the basement and was entering the kitchen area of the home when he saw and heard the horrifying scene of the KCPD 630-SQUAD crashing into his home with weapons drawn and moving rapidly towards him.

59. Terrance was stunned, silent, and confused by the conflicting orders that he was given to: "Show Your Hands!" "Freeze!" and "Get Down!" Defendant Hernandez was the KCPD 630-SQUAD point man, meaning that he was the first one to proceed through the house and the first to encounter Terrance. Although Defendant Hernandez would later describe

Terrance as resembling a "deer in the headlights" because he was stunned, motionless, and offering no resistance; Defendant Hernandez forcibly tackled Terrance to the ground. Defendant Hernandez announced to other KCPD 630-SQUAD officers that Terrance was clearly unarmed before proceeding to search other portions of the Morris Home.

60. Two other KCPD 630-SQUAD officers observed that Terrance was on the floor, scared, motionless, offering no resistance, and unarmed, and immediately moved on past him to search other areas of the Morris Home.

61. Defendant Hockemeier, the senior and highest ranking officer of KCPD 630-SQUAD, saw Terrance on the floor and kicked him straight in the mouth, causing a painful laceration-contusion injury, and the pooling of blood on the kitchen floor and around Terrance's face as he was made to lay on the kitchen floor while the KCPD 630-SQUAD ransacked the Morris Home.

62. Ms. Morris arrived at the Morris Home while the KCPD 630-Squad was storming through it. Ms. Morris pulled into the driveway, which KCPD officers had failed to secure; and, as she proceeded towards the house, she noticed a suspicious looking person lurking towards the rear of the home for no reason known to her. She then encountered an officer who warned her that if she had went into her home; she could have been "shot."

63. KCPD officers ordered Ms. Morris away from the house, to the other side of her car, and to remain in the driveway. Defendant Lanpher approached her

and undertook to explain why her home was being invaded and violently searched by the KCPD 630-SQUAD He delivered the shocking news that her sons were suspected in the shooting of Gunshot Victim.

64. Confronting the shock of her home being ransacked and the greater shock that her sons were suspected of a violent crime. Ms. Morris, fully informed of Terrance and Ricardo and their character and reputation, and, fully aware of the fact that they have never been criminals, told the officers that her "boys would not do that."

65. At that point, Defendant Schweitzer, maliciously, unnecessarily, and with reckless disregard for the truth, derided and impugned Ms. Morris's parenting ability, and her sons' respective characters, at one point telling her, "Evidently Miss Morris, you do not know what goes on in your house when you are at work."

66. Defendant Lanpher then told Ms. Morris about Terrance's injury and that a MAST ambulance would respond. In so reporting, Defendant Lanpher knowingly, deliberately and with reckless disregard for the truth, and for the sole purpose of concealing the wrongful acts of members of the KCPD 630-SQUAD told Ms. Morris that Terrance had "resisted arrest."

67. After medical treatment by MAST, KCPD officers removed Terrance, in restraints, from the house; placed him into a KCPD vehicle; and transported him from the Morris Home. Ms. Morris and all members of the community then present were

witness to these humiliating and reputation damaging events.

68. No single item was seized pursuant to the Search Warrant.

69. When Ms. Morris was finally allowed to enter her own home, she discovered that her front door and its frame were severely damaged by Defendant Bronner and the KCPD 630-SQUAD, and that the Morris Home was in complete disarray with just about everything in the house removed from its normal storage and thrown about the house.

70. When Defendant Lanpher departed from the Morris Home, he left a phone number and directions for Ricardo to call and assist with the investigation.

71. Terrance was booked, detained, and questioned.

72. After Ms. Morris made contact with Ricardo, he reported to Police Headquarters for detention and questioning. In response to a question as to his whereabouts on the night of the shooting, he informed Defendant Lanpher that he was at work.

73. Defendant Lanpher easily verified with Ricardo's employer that Ricardo was at work at the time of the shooting, and then released Terrance and Ricardo from jail. Following Terrance's release, Ms. Morris transported him to Research Medical Center for treatment of his injury.

74. Ms. Morris, Terrance, and Ricardo reported the incident to the Defendant Board by filing a complaint with its Office of Citizen Complaints (hereinafter, "OCC") in the days immediately following the

KCPD 630-SQUAD's forceful and unnecessary invasion of the Morris Home.

75. As a result of the complaint, OCC directed, or, should have directed, the KCPD Internal Affairs unit to investigate the following: the deliberately misleading affidavit and the invalid search warrant issuing therefrom; the thoughtlessly immediate deployment of the KCPD 630-SQUAD to crash into the home of citizens who no reasonable officer could suspect of the robbery and shooting of an apparent drug dealer in his armed fortress; the excessive force used against a completely defenseless and non-resisting citizen in his own home; and the malicious, unfounded, and unnecessary disrespect, slander, and discourtesy shown by Defendant Schweitzer towards a mother who is already suffering the trauma of witnessing the KCPD invade her home and falsely accuse her sons.

76. The KCPD Internal Affairs investigation ordered by Defendant Board was purposefully inadequate in that no attempt was made to address the primary issue of the complaint, the fact that the KCPD 630-SQUAD invaded the Morris Home only because of the existence of a Search Warrant that would not have issued, but for the violation of rights secured under the Fourth and Fourteenth Amendments of the United States Constitution.

77. The KCPD Internal Affairs investigation ordered by Defendant Board was purposefully inadequate in regards to the narrow issues purportedly investigated, the use of excessive force by members of KCPD 630-SQUAD, and the malicious discourtesy

demonstrated by Defendant Schweitzer, in that no attempt was made to fairly and critically assess the credibility of the KCPD Officers and their statements. In sharp contrast, the same investigators confronted Terrance, Ricardo, and Ms. Morris with heightened scrutiny, skepticism, and aggressive challenges to their credibility, including a polygraph examination, all of which they endured in fully cooperating with the investigation.

78. Defendant Lanpher, Defendant Hockemeier, Defendant Schweitzer, Defendant Bronner, and Defendant Hernandez, each and all, knowingly, deliberately, and with reckless disregard for the truth intentionally failed to be truthful and forthright in statements of report and following the KCPD 630-SQUAD entry and in the KCPD Internal Affairs investigation for the sole purpose of concealing their own wrongful acts and the wrongful acts of fellow KCPD officers, and for the single reason that if they, each and all, had been truthful and forthright in statements of report following the KCPD 630-SQUAD entry and in the KCPD Internal Affairs investigation, their wrongful acts and the wrongful acts of other KCPD officers would have been discovered by a competent investigator.

79. Defendant Lanpher and his supervisor Defendant Schweitzer, apparently made no further effort to solve the shooting of Gunshot Victim after their misguided decision to direct the KCPD 630-SQUAD to break into the Morris Home on July 30, 2003, and, as of October of 2003, they officially inactivated the investigation due to Gunshot Victim's

complete refusal to cooperate with KCPD efforts to solve the crime.

COUNT I

Against Defendant Lanpher for Illegal Affidavit/ Application for Search Warrant and Resulting Deprivation of Right, Cognizable under 42 U.S.C. § 1983

80. Plaintiffs incorporate by reference paragraphs 1 through 79 of this complaint as if fully set forth in this paragraph.

81. By his actions described in the above referenced paragraphs and further set forth below regarding the Affidavit/Application for a Search Warrant for the Morris Home, and, by 42 U.S.C. § 1983, Defendant Lanpher acted under color of state law and subjected the plaintiffs, or, caused the plaintiffs to be subjected to, the deprivation of a right or rights secured by the Constitution or laws of the United States, including those specifically secured by the Fourth and Fourteenth Amendments of the United States Constitution.

82. In regards to the Affidavit/Application for a Search Warrant for the Morris Home, Defendant Lanpher violated clearly established law.

83. As a KCPD officer, Defendant Lanpher is charged with knowing established law and the rights secured by the Constitution or laws of the United States and held by citizens he encounters in the course of his duties.

84. KCPD Legal Bulletin No. 98-2 puts all KCPD Officers on notice of the legal requirements for honesty and disclosure of exculpatory facts in

Search Warrant Affidavit/Applications.

85. In regards to the Affidavit/Application for a Search Warrant for the Morris Home, Defendant Lanpher is not entitled to qualified immunity or official immunity.

86. In regards to the Affidavit/Application for a Search Warrant for the Morris Home, Defendant Lanpher's actions were not objectively reasonable.

87. As a direct and proximate result of Defendant Lanpher's illegal Affidavit/Application for a Search Warrant, a search warrant issued to search the Morris Home when probable cause was lacking and when no objectively reasonable affiant would have believed it existed.

88. As a direct and proximate result of Defendant Lanpher's illegal Affidavit/Application for a Search Warrant, Plaintiffs suffered deprivation of: their right to be free from an illegal search of their home; and, their right to due process of law.

89. As a direct and proximate result of Defendant Lanpher's illegal Affidavit/Application for a Search Warrant, the KCPD 630-SQUAD executed the illegal warrant with an unnecessarily violent, destructive, and dangerous invasion of the Morris Home that damaged the Plaintiffs by causing bodily injury, property damage, and emotional distress.

90. As a direct and proximate result of Defendant Lanpher's illegal Affidavit/Application for a Search Warrant, Plaintiff Terrance Morris was subject to further deprivation of right by the use of excessive force by members of the KCPD 630-Squad.

91. As a direct and proximate result of Defendant Lanpher's illegal Affidavit/Application for a Search Warrant and his actions to secure the false facts and misrepresentations included in the same, Plaintiffs Terrance and Ricardo have lived in continuous fear that Gunshot Victim, an apparent criminal with deadly weapons, might believe the idea planted in his head by Defendant Lanpher, and seek revenge and retaliation against them even though they had nothing at all to do with the shooting of Gunshot Victim.

92. As a direct and proximate result of Defendant Lanpher's illegal Affidavit/Application for a Search Warrant, Plaintiffs have suffered damage to their reputation resulting from the spectacle of the KCPD 630-SQUAD forcibly invading their home.

93. The acts of Defendant Lanpher as described above were intentional, malicious, and, resulted from his reckless and callous indifference to: Plaintiffs' Constitutional rights, the sanctity of the Morris Home; and, the natural and probable consequential dangers to property and person that result when an illegal and unnecessary search warrant issues and the KCPD 630-SQUAD is deployed to crash into the lives of law-abiding citizens who are momentarily under suspicion only because of his dishonest and incompetent investigatory techniques.

94. Exemplary damages are warranted, and, necessary to discourage Defendant Lanpher and his KCPD colleagues from future and further deprivation of right resulting from illegal Affidavit/Application for Search Warrant practices and

procedures.

95. Plaintiffs seek an award for attorney's fees and costs pursuant to 42 U.S.C. § 1988.

ON THE FACTS ABOVE, Plaintiffs pray for judgment against Defendant Lanpher for: compensatory damages in an amount that is fair and reasonable; attorney's fees and costs; exemplary damages; and such other relief as the Court deems just and proper.

COUNT II

Against Defendant Schweitzer for Failure to Supervise Defendant Lanpher and Resulting Deprivation of Right, Cognizable under 42 U.S.C. § 1983

96. Plaintiffs incorporate by reference paragraphs 1 through 95 of this complaint as if fully set forth in this paragraph.

97. By Defendant Schweitzer's actions described in the above referenced paragraphs and further set forth below regarding his failure to properly supervise Defendant Lanpher during their investigation into the shooting of Gunshot Victim, and, by 42 U.S.C. § 1983, Defendant Schweitzer acted under color of state law and subjected the plaintiffs, or, caused the plaintiffs to be subjected to, the deprivation of a right or rights secured by the Constitution or laws of the United States, including those specifically secured by the Fourth and Fourteenth Amendments of the United States Constitution.

98. In regards to the Defendant Lanpher's investigation into the shooting of Gunshot Victim, Defen-

dant Schweitzer was Defendant Lanpher's immediate supervisor in the KCPD Violent Crimes Unit.

99.. In regards to the Defendant Lanpher's investigation into the shooting of Gunshot Victim, Defendant Schweitzer directly participated by reviewing, authorizing, and approving acts of Defendant Lanpher the led to deprivation of right.

100. At the time that Defendant Schweitzer supervised Defendant Lanpher; he knew that his peer and subordinate KCPD officers would sometimes swear out Affidavit/Applications for Search Warrants that included deliberately false and misleading information and, that failed to disclose exculpatory facts then known to the affiant.

101. At the time that Defendant Schweitzer supervised Defendant Lanpher, he knew that his peer and subordinate KCPD officers would sometimes circumvent the Constitutional framers' intention that the magistrate with the authority to issue warrants upon a finding of probable cause would make such finding upon consideration of the facts then known by the affiant.

102. In regards to the Defendant Lanpher's investigation into the shooting of Gunshot Victim, Defendant Schweitzer demonstrated deliberate indifference to; or, gave his tacit authorization to; the acts of Defendant Lanpher the led to deprivation of right.

103. In regards to the Defendant Lanpher's investigation into the shooting of Gunshot Victim, Defendant Schweitzer failed to take remedial action to correct or prevent the acts of Defendant Lanpher the

led to deprivation of right.

104. As a direct and proximate result of Defendant Schweitzer's failure to supervise Defendant Lanpher, a search warrant issued to search the Morris Home when probable cause was lacking and when no objectively reasonable affiant would have believed it existed.

105. As a direct and proximate result of Defendant Schweitzer's failure to supervise Defendant Lanpher, Plaintiffs suffered deprivation of: their right to be free from an illegal search of their home; and, their right to due process of law.

106. As a direct and proximate result of Defendant Schweitzer's failure to supervise Defendant Lanpher, the KCPD 630-SQUAD executed the illegal warrant with an unnecessarily violent, destructive, and dangerous invasion of the Morris Home that damaged the Plaintiffs by causing bodily injury, property damage, and emotional distress.

107. As a direct and proximate result of Defendant Schweitzer's failure to supervise Defendant Lanpher, Plaintiff Terrance Morris was subject to further deprivation of right by the use of excessive force by members of the KCPD 630-SQUAD.

108. As a direct and proximate result of Defendant Schweitzer's failure to supervise Defendant Lanpher and prevent that defendant's actions to secure the false facts and misrepresentations included in the illegal Affidavit/Application for a Search Warrant, Plaintiffs Terrance and Ricardo have lived in continuous fear that Gunshot Victim, an apparent

criminal with deadly weapons, might believe the idea planted in his head by Defendant Lanpher, and seek revenge and retaliation against them even though they had nothing at all to do with the shooting of Gunshot Victim.

109. As a direct and proximate result of Defendant Schweitzer's failure to supervise Defendant Lanpher, Plaintiffs have suffered damage to their reputation resulting from the spectacle of the KCPD 630-SQUAD forcibly invading their home.

110. In regards to Defendant Schweitzer's failure to supervise Defendant Lanpher, Defendant Schweitzer violated clearly established law.

111. As a KCPD officer in a supervisory capacity, Defendant Schweitzer is charged with knowing established law and the rights secured by the Constitution or laws of the United States and held by citizens that he and his subordinates encounter in the course of their duties.

112. In regards to Defendant Schweitzer's failure to supervise Defendant Lanpher, Defendant Schweitzer is not entitled to qualified immunity or official immunity.

113. In regards to Defendant Schweitzer's failure to supervise Defendant Lanpher, Defendant Schweitzer's actions were not objectively reasonable.

114. Defendant Schweitzer was present and participated in the execution of the Search Warrant for the Morris Home, instead of properly supervising Defendant Lanpher; he performed the wrongful acts more fully described in paragraph 65 above.

115. The acts of Defendant Schweitzer as described above were intentional, malicious, and, resulted from his reckless and callous indifference to: Plaintiffs' Constitutional rights, the sanctity of the Morris Home; Ms. Morris's reasonable expectation to be free from malicious and unfounded discourtesy and slander from an officer who does not know the facts, and, the natural and probable consequential dangers to property and person that result when an illegal and unnecessary search warrant issues and the KCPD 630-SQUAD is deployed to crash into the lives of law-abiding citizens who are momentarily under suspicion only because of his and his subordinates' dishonest and incompetent investigatory techniques.

116. Exemplary damages are warranted, and, necessary to discourage Defendant Schweitzer and his KCPD colleagues from future and further deprivation of right resulting from the failure to properly supervise Affidavit/Application for Search Warrant practices and procedures.

117. Plaintiffs seek an award for attorney's fees and costs pursuant to 42 U.S.C. § 1988.

ON THE FACTS ABOVE, Plaintiffs pray for judgment against Defendant Schweitzer for: compensatory damages in an amount that is fair and reasonable; attorney's fees and costs; exemplary damages; and such other relief as the Court deems just and proper.

[Remainder of Complaint omitted]

Dated: April 21, 2005 Respectfully submitted,

/s/ Paul Matthew Tancredi
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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

Terrance Morris, et al., Plaintiffs,	)	
vs.	)	No. 05-0362-CV-W-FJG
Jarrett Lanpher, et al., Defendants.	)	

Digest of Jointly Proposed Jury Instructions

Paul Matthew Tancredi, for all Plaintiffs, and Matthew Briesacher, Assistant Attorney General for the State of Missouri for all Defendants, by Rule 51, Local Rule 51.1 and the Court's order, now jointly propose those jury instructions to which they have agreed. The instructions are attached as Exhibits A & B, with Exhibit B being a clean copy.

Dated: February 1, 2007 Respectfully submitted,

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Attorneys for Detectives

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was electronically filed with the United States District Court and a copy of the Notice of Electronic Filing of the above document was transmitted via e-mail this 1st day of February, 2007, to:

Matthew Briesacher
Assistant Attorney General
P.O. Box 899
Jefferson City, Missouri 645102

/s/ Paul Matthew Tancredi
Attorney for Plaintiffs

INSTRUCTION NO._____

Your verdict must be for plaintiffs Rosalind, Terrance and Ricardo Morris and against defendant Lanpher if all the following elements have been proved by the preponderance of the evidence:

First, defendant Lanpher swore an affidavit/ application for search warrant in which he made false statements or omitted truthful information that created a falsehood; and

Second, defendant Lanpher made those omissions or false statements either deliberately or with a reckless disregard for the truth; and

Third, those omissions or false statements were material, or necessary, to determining whether or not probable cause for the search warrant existed, and

Fourth, plaintiffs suffered damages as a direct result of defendant Lanpher's actions.

The Fourth Amendment requires police officers to swear an oath or affirmation which establishes probable cause to get the permission the search warrant represents. To be valid, a search warrant must be based probable cause to believe that evidence, instrumentalities, or fruits of a crime, contraband, or a person for whose arrest there is probable cause may be found in the place to be searched. Probable cause for a warrant exists only when the totality of the circumstances provides sufficient facts to lead a prudent person to believe there is a fair probability that contraband or other evidence of a crime will be found at the location identified in the search warrant. The

officer must honestly believe or appropriately accept that all included information is true, and he cannot omit information clearly critical to a probable cause determination.

If any of the above elements has not been proved by the preponderance of the evidence, then your verdict must be for defendant Lanpher.

Instruction No. 16

8th Circuit Model Civil Jury Instruction 4.10 (modified); UNITED STATES CONSTITUTION, Amendment IV; *Franks v. Delaware*, 438 U.S. 154 (1978); *Illinois v. Gates*, 462 U.S. 213 (1983); *Hunter v. Namanny*, 219 F.3d 825 (8th Cir. 2000); and *Warden v. Hayden*, 387 U.S. 294 (1967).

This proposed instruction is agreed upon by the parties

INSTRUCTION NO. _____

If you find in favor of plaintiffs Rosalind, Terrance and Ricardo Morris on their claim against defendant Lanpher as submitted in Instruction Number _____, then you must consider plaintiffs' claim against defendant Schweitzer.

Your verdict must be for plaintiffs if all of the following elements have been proved by the preponderance of the evidence:

First, defendant Lanpher violated plaintiffs' constitutional rights;

Second, that defendant Schweitzer failed to provide adequate supervision of defendant Lanpher; and

Third, the failure of defendant Schweitzer to provide adequate supervision caused injury to the plaintiffs.

Instruction No. 19

§165.26 (modified), Federal Jury Practice and Instructions, Fifth Edition; *Otey v. Marshall*, 121 F.3d 1150 (8th Cir. 1997).

This proposed instruction is agreed upon by the parties.